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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-521

IRISH NORTHERN AID COMMITTEE,
Petitioner,

vs.

ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

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No.

IRISH NORTHERN AID COMMITTEE,

Petitioner,

VS.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Second Circuit entered on August 24, 1972, affirming the order of the United States District Court for the Southern District of New York which granted a preliminary injunction directing petitioner to comply with the provisions of the Foreign Agents Registration Act (22 U.S.C. § 611 *et seq.*) and produce its books and records for inspection by officials charged with enforcement of the Act.

Judgment and Opinion of the Court Below

The order of the United States Court of Appeals for the Second Circuit affirming the order of the District Court was entered August 24, 1972, without opinion, and is set forth in Appendix A. The opinion of the United States District Court for the Southern District of New York ordering that a preliminary injunction issue was filed August 7, 1972, and is not reported, but is set forth in Appendix B.

Jurisdiction

The order of the United States Court of Appeals for the Second Circuit was entered on August 24, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Does the First Amendment to the United States Constitution protect from government disclosure the names of contributors to a controversial organization and the mailing list of such an organization when there is no substantial relation between the need for disclosure and any compelling and overriding governmental purpose?

2. Does the Fourth Amendment to the United States Constitution protect the books and records of an organization from unlimited disclosure when no particular purpose has been advanced for their inspection and circumstances suggest the existence of an improper purpose?

Statutes and Regulations Involved

22 U.S.C. § 615

Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this Act, in accordance with such business and accounting practices, as the Attorney General having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act and shall preserve the same for a period of three years following the termination of such status. Until regulations are in effect under this section every agent of a foreign principal shall keep books of account and shall preserve all written records with respect to his activities. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

28 C.F.R. § 5.201(e)

Whenever a registrant, within the United States receives or collects contributions, loans, money, or other things of value, as part of a fund-raising campaign, for or in the interests of his foreign principal, he shall file as Exhibit D a statement so captioned setting forth the amount of money or the value of the thing received or collected, the names and addresses of the persons from whom such money or thing of value was received or collected, and the amount of money or a description of the thing of value transmitted to

the foreign principal as well as the manner and time of such transmission.

28 C.F.R. § 5.500(a)

A registrant shall keep and preserve in accordance with the provisions of section 5 of this Act the following books and records:

• • •

(4) Records containing the names and addresses of persons to whom political propaganda has been transmitted.

Statement of the Case

The petitioner, Irish Northern Aid Committee, was organized in order to help alleviate the suffering and hardship resulting from the ongoing civil strife in Northern Ireland. It has collected money and clothing and sent these contributions to aid the needy in that country (Flannery affidavit dated July 13, 1972).[1]

The Department of Justice required the Committee to register under the Foreign Agents Registration Act (22 U.S.C. § 611 *et seq.*). On January 29, 1971 the Committee registered, under protest, as the agent of the Northern Aid Committee of Belfast (Flannery affidavit dated July 13, 1972; Harris affidavit dated July 18, 1972) and subsequently filed periodic supplemental statements.

On March 28, 1972, the Justice Department requested additional information from the Committee, including the filing of "Exhibit D", a statement of expenditures and contributions (with names and addresses of contributors); a supplemental registration statement if the Committee was acting as a representative for the Provisional Irish Republican Army; and copies of political propaganda (Harris affidavit dated July 18, 1972).

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[1] References are to portions of the Record of the District Court, copies of which have been submitted to this Court.

The Committee's counsel, Frank Durkan, responded April 17, 1972 stating that the requested information would be forthcoming. Shortly thereafter, a statement of expenditures was submitted to the Department of Justice (Harris affidavit dated July 18, 1972).

On May 15, 1972, the Justice Department reiterated its request for information regarding contributors and the Committee's supposed representation of the Provisional Irish Republican Army (Harris affidavit dated July 18, 1972).

On June 12, 1972, three officials of the Committee were served with subpoenas to appear at a grand jury investigation in Fort Worth, inquiring into, *inter alia*, violations of the Foreign Agents Registration Act. However, these subpoenas were cancelled prior to the date on which the officers were to appear, leading them to believe that they were the targets of the investigation. Other rank and file members of the Committee responded to the subpoenas and were offered immunity; however they have refused to testify for reasons now being litigated (Durkan, Flannery and McCarthy affidavits all dated July 13, 1972).

At approximately the same time, Acting Assistant Attorney General A. William Olson who had approved the grant of immunity to one of the Committee members subpoenaed, wrote to the Committee demanding inspection of its books and records (Durkan affidavit dated July 13, 1972). After the Committee's refusal to permit such an inspection, the Attorney General commenced an action pursuant to 22 U.S.C. § 618(f) seeking preliminary and permanent injunctive relief to require the Committee to produce all of its books and records for inspection.

The Committe opposed the relief requested on the grounds that the government was seeking disclosure of evidence for use in a criminal proceeding; that an order requiring disclosure of *all* books and records would violate

the Fourth Amendment; and that an order requiring disclosure of the names of the Committee's members or contributors would violate the First Amendment. Suggestions for limiting an order requiring inspection were also presented (Petitioner's Brief in Opposition to Application for Injunction dated July 13, 1972).

On August 7, 1972, District Judge Arnold Bauman granted a preliminary injunction ordering the Committee to produce for inspection all its books and records without limitation.[2] Judge Bauman relied primarily on *Uphaus* v. *Wyman*, 360 U.S. 72; *Barenblatt* v. *United States*, 360 U.S. 109; and *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, in requiring disclosure of the names of contributors. (App. B p. 9a *et seq.*) A notice of appeal from this order was filed August 14, 1972.

On August 18, 1972 the Second Circuit granted a stay pending appeal, ordering briefs filed by August 22nd, and the appeal heard August 23rd. August 24, 1972, the Court of Appeals affirmed the District Court order.

On September 21, 1972, the Committee sought a stay pending petition for certiorari from Mr. Justice Marshall. At a hearing in chambers, Justice Marshall stated he would refer the application for a stay to the entire Court. Petitioner has promptly filed this petition for certiorari in order to expedite full consideration of the application for a stay.

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[2] The preliminary injunction granted below would require disclosure of the names and addresses of contributors as well as the identity of those on petitioner's mailing list. We have no idea why the government would wish to inspect the names and addresses of those on petitioner's mailing list, but because the injunction requires the production of all the Committee's books and records, and because the regulations require such a mailing list to be maintained and available for inspection, unless the injunction is set aside or appropriately limited, the government will have access to that document for whatever purposes it may have.

Reasons for Granting the Writ

1. The Preliminary Injunction Ordering Disclosure Of All Petitioner's Books And Records, Including The Names Of Its Supporters, Violates The First Amendment To The United States Constitution.

The compulsory disclosure of lists of names of individuals associated with an organization required to register under the Foreign Agents Registration Act, raises an important constitutional question which has not yet been presented to this Court.

The decisions of this Court respecting disclosure of lists of names of individuals associated with organizations are split into two divergent lines of authority: those cases dealing with membership in subversive organizations in which disclosure was mandated by a sharply divided court, for example, *Uphaus* v. *Wyman*, *supra; Barenblatt* v. *United States, supra;* and *Communist Party* v. *Subversive Activities Control Board, supra;* and the more recent cases in which lists of members and contributors[3] were protected from disclosure, e.g. *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449; *Bates* v. *City of Little Rock,* 361 U.S. 516; *Gibson* v. *Florida Legislative Investigation Committee,* 372 U.S. 539; *Louisiana ex rel. Gremillion* v. *N.A.A.C.P.,* 366 U.S. 293; *Pollard* v. *Roberts,* 283 F. Supp. 248 (D. Ark. 1968) *aff'd per curiam* 393 U.S. 14.

The divergence in the two lines of cases is the result of the well-established legislative determination that the Com-

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[3] Although lists of members and contributors have been protected, petitioner is aware of no cases which deal with disclosure of mailing lists. However it must be kept in mind that in an organization like the Irish Northern Aid Committee, the list of contributors and the mailing list are substantially identical to a membership list. Moreover disclosure of a mailing list would present an additional First Amendment freedom of expression issue, *Cf. Lamont* v. *Postmaster General,* 381 U.S. 301.

munist Party and related claimed subversive organizations presented an immediate threat to this country's national security, and that investigation into organizational affiliation was necessary for the self-preservation of our society. *Uphaus* v. *Wyman, supra,* at 80; *Barenblatt* v. *United States, supra,* at 128. Justice Harlan stated that it was on this premise that the Court "has upheld federal legislation aimed at the Communist problem which in a different context would certainly have raised constitutional problems of the gravest character". *Barenblatt* v. *United States, supra,* at 128.

In contrast, there has been no legislative determination that organizations registered under the Foreign Agents Registration Act or their contributors constitute anything like the sort of extreme threat found to exist in the *Barenblatt* line of cases. In fact, the legislative history surrounding the amendment of the Foreign Agents Registration Act discloses that it now has two fairly limited purposes: (1) to disclose to government agencies and officials the existence of foreign interests where attempts are made to influence governmental decisions and policies, and (2) to disclose the source of foreign propaganda which is made available to the public at large. Senate Report (Committee on Foreign Relations) No. 143, April 1, 1965. Thus, the thrust of the Act is to identify sources of influence rather than to root out subversive and hostile forces. Whether the former governmental interest can be characterized as "overriding and compelling" is an issue which is yet to be resolved, and consequently, the constitutional problem raised in this case by disclosure of association is not concluded by the rule of the *Barenblatt* line of cases.

Instead, the Court must follow the analysis prescribed in *Gibson* v. *Florida Legislative Investigation Committee, supra*: the government must convincingly show a *substantial* relationship between an overriding and compelling governmental purpose and the inquiry into organizational

affiliation. However, the government has not yet been required to demonstrate such a substantial nexus, so that even if we were to concede here that the purposes of the Act are of an overriding and compelling nature, disclosure under the rule of *Gibson* cannot be required.[4]

Insistence on disclosure is further weakened by the fact that the Act itself does not require the identification of contributors to a registered agent of a foreign principal.[5] Thus, not only do the purposes of the Act disclose a government interest substantially less significant than its interest in the area of outright subversion, but Congress apparently did not consider the information demanded here to be essential to the enforcement of the Act and the accomplishment of its purposes.

Counter-balanced against the weight to be given to the government interest in disclosure is the concomitant infringement of the right of freedom of association.

The record discloses that the Irish Northern Aid Committee is largely composed of Irish-Americans vitally concerned with the civil strife in Northern Ireland. The tragic political situation there grows out of religious, political and historical issues of the most intense kind. Feelings

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[4] Moreover such a showing of the specific government purpose and its relation to this particular demand is necessary to enable the Court to determine whether justifiable governmental goals might not be achieved by a more narrow means having a less significant impact on First Amendment rights. *Cf. Freedman* v. *Maryland*, 380 U.S. 51; *N.A.A.C.P.* v. *Alabama, supra; Martin* v. *City of Struthers*, 319 U.S. 141; *Elfbrandt* v. *Russell*, 384 U.S. 11.

[5] Section 612(a)(7) of the Act might be read to require such information; however, the legislative history of the 1966 Amendment to the Act states that subsection 7 would "require information with respect to those persons, not themselves foreign principals, who are so related to a foreign principal that their agents, when engaged in political activities in the interests of the principal are required to register under the Act." (Senate Report No. 143, at p. 10).

run high with respect to the Irish question not only in Northern Ireland but in the United States as well.

Moral or financial support of any of the factions in that dispute involves association and identification with a particularly controversial group, and, as a result, disclosure of the names of those who support the Committee would markedly burden their First Amendment right to freedom of association. *Cf. Laird* v. *Tatum*, ... U.S. ..... (June 26, 1972, 40 USLW 4850). Consequently, in view of the absence of any compelling and overriding government purpose, any such disclosure must not be allowed.

In the analogous situation regarding the disclosure of membership lists of the N.A.A.C.P., Mr. Justice Harlan said:

> "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective ... restraint of freedom of association. . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *N.A.A.C.P.* v. *Alabama, supra*, at 462.

The freedom from compulsory disclosure and consequent protection of the right of association is an interest which can be asserted not only in the case of public disclosure (which the government presumably seeks here regarding the names of contributors) but also in those cases in which the government seeks the information for its own purposes.

The extent to which protected information will be dispersed is not the criteria for determining whether disclosure of such information should be compelled. *Cf. United States* v. *Caldwell*, ... U.S. ..... (June 29, 1972, 40 USLW 5025) in which disclosure to a grand jury was ordered only after

the Court's determination that the *Gibson* test had been met. See also *Pollard* v. *Roberts, supra,* where disclosure of contributors to the Arkansas Republican Party was not ordered in connection with a grand jury investigation into election abuses.[6]

The facts of this particular case, and the novelty of the issue here raised under the Foreign Agents Registration Act require a determination by this Court as to the principles to be applied in safeguarding the First Amendment right to freedom of association. As Justice Brennan stated in his dissenting opinion in *Uphaus* v. *Wyman, supra*:

> "[A]ny line other than a universal subordination of free expression and association to the asserted interests of the State in investigation and exposure will be difficult of definition; but this Court has rightly turned its back on the alternative of universal subordination of protected interests, and we must define rights in this area the best we can. The problem is one in its nature calling for traditional case-by-case development of principles in the various permutations of circumstances where the conflict may appear. But guidelines must be marked out by the courts." at p. 85.

2. The Unlimited Compulsory Disclosure Ordered By The District Court Violates The Fourth Amendment Rights Of The Petitioner.

Unrestricted disclosure such as that called for by the preliminary injunction requiring production of *all* peti-

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[6] In a similar situation, the Department of Justice has itself recognized that lists of contributors should not ordinarily be required. In *Levinson* v. *Attorney General,* 321 F. Supp. 984 (D. Pa. 1970), the government in connection with a grand jury investigation for mail fraud sought to subpoena the names of contributors to a defense fund for Eldridge Cleaver. After a motion to quash the subpoena of this information was denied, the government voluntarily withdrew its demand.

tioner's books and records amounts to an unreasonable search in violation of the Fourth Amendment. In proceedings analogous to these, courts have enforced administrative summons and warrants but only upon a showing that there is a legitimate purpose for the proposed search, and only after a careful balancing of the governmental interest involved and the deprivation of privacy resulting from enforcement. *Camara* v. *Municipal Court,* 387 U.S. 523; *See* v. *City of Seattle,* 387 U.S. 541.

In *United States* v. *Powell,* 379 U.S. 48, the Court articulated the minimal standards which the Internal Revenue Service must meet to obtain judicial enforcement of its subpoenas for the production of a taxpayer's books and records. The Court required that the Service show, among other things, that the investigation was being conducted pursuant to a legitimate purpose, and that the inquiry was relevant to that purpose.

No such showing has been made by the government in this case. The fact that the statute may not require a showing of purpose prior to the issuance of an order compelling disclosure does not, of course, excuse such a showing, which is constitutionally required. *United States* v. *Roundtree,* 420 F.2d 845 (5th Cir. 1969); *Stark* v. *Connally,* ..... F. Supp. ..... (D. Cal. Sept. 11, 1972, 41 USLW 2132).

It may be that in this case, the government would be entitled to a limited inspection of books and records relating to particular issues. At the hearing on the government's request for an injunction mandating disclosure of all records of the Committee, the petitioner proposed that if disclosure was to be ordered, it be tailored to disclose information relevant particular purposes in which the government had a legitimate interest. As the order stands now, however, the injunction mandates disclosure of every scrap of paper which petitioner may have.

This shotgun request for information is all the more questionable in view of the present investigation now being conducted by a grand jury in Texas. The coincidence of the demand for disclosure and the grand jury proceedings, the involvement of Attorney General Olson in both proceedings, the fact that the grand jury is inquiring into violations of the Foreign Agents Registration Act, the fact that subpoenas previously issued to the representatives of the Irish Northern Aid Committee in New York were withdrawn, making them fear that they were the targets of the investigation, have led the petitioner to believe that the documents sought were being requested for the purpose of gathering evidence for use in a criminal proceeding. Moreover the disclosure of the names of its contributors and identification of individuals on the mailing list might have exposed them to subpoena by the Texas grand jury. Until the Justice Department comes forward with a legitimate purpose for its present investigation and a limited demand for disclosure of information related to that purpose, the petitioner should not be required to produce all of its books and records.[7]

CONCLUSION

For these reasons, a writ of certiorari should issue to review the order of the Second Circuit affirming the order of the District Court.

Respectfully submitted,

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September 27, 1972

[7] See the related line of cases in which the Internal Revenue Service has been denied enforcemnt of a subpoena when it was sought to obtain evidence in a criminal prosecution: *United States* v. *O'Connor*, 118 F. Supp. 248 (D. Mass. 1953); *United States* v. *Weingarden*, 333 F. Supp. 474 (D. Mich. 1971); and *United States* v. *Kyriaco*, 326 F. Supp. 1184 (D. Cal. 1971).

Appendix A

(Order of the Court of Appeals)

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-fourth day of August, one thousand nine hundred and seventy-two.

Present:

HON. WALTER R. MANSFIELD,

HON. WILLIAM H. TIMBERS,
Circuit Judges

HON. MURRAY I. GURFEIN,
District Judge

ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

IRISH NORTHERN AID COMMITTEE, 273 East 194th Street, New York, New York 10458,
Defendant-Appellant.

Appeal from the United States District Court of the Southern District of New York.

Appendix A

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is affirmed with costs to be taxed against the appellant.

A. Daniel Fusaro
Clerk

By Vincent A. Carlin
Chief Deputy Clerk

Appendix B

(Opinion and Order of the District Court)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
72 CIV. 2863

ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,
Plaintiff,

against

IRISH NORTHERN AID COMMITTEE, 273 East 194th Street, New York, New York 10458,
Defendant.

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Appendix B

BAUMAN, *D. J.*

The Attorney General of the United States has moved for a preliminary injunction pursuant to § 7(f) of the Foreign Agents Registration Act of 1938, as amended [1] ("the Act"), directing defendant Irish Northern Aid Committee to produce its books and records for inspection by officials charged with the enforcement of the Act.

The meaningful facts are not in dispute. The defendant, an unincorporated association doing business in the Bronx, registered as an agent of a foreign principal on or about January 29, 1971 pursuant to § 2 of the Act.[2] A supplemental statement was filed on January 29, 1972.

Some two months later, on March 28, in a letter emanating from the Internal Security Division of the Department of Justice, defendant's attention was directed to shortcomings in that statement and its failure to comply with other Department information requests. Forms were enclosed where they existed and information concerning defendant's representation of the Provisional Irish Republican Army was specifically requested. The letter went on to say:

> "... We have on numerous occasions advised you of your obligations under this section of the Act and we can only construe any further failures on your part to properly label and report any political propaganda disseminated by you as wilfull violations of the Act."

Frank Durkan, an attorney, replying on behalf of the Irish Northern Aid Committee on April 7, noted that when the defendant's relationship with the Provisional Irish Republican Army had been verified the information requested in the Department's letter of March 28 would be forthcoming. Talking to the point raised by the Justice Department, Mr. Durkan wrote of the membership:

> "... We have, however, impressed upon them the necessity of making every effort to live by and

adhere to those rules, no matter how onerous they may be or how unreasonable they may seem. The undersigned has volunteered to help them henceforth."

Durkan's response ended with an offer with respect to problems concerning compliance to try "to assist in obtaining the information you seek" if the Department would thereafter contact him.

A schedule of remittances was mailed by defendant to the Department on or about April 14, from which it appeared that between August 5, 1971 and January 10, 1972, $128,099 had been raised and distributed, all but $7,399 of which was delivered to one Joseph Cahill. On May 15, a letter signed "A. William Olson, Acting Assistant Attorney General, Internal Security Division—By: Justin J. O'Shea, Chief, Registration Section" pointed out that information long outstanding had not been received and that the schedule of remittances of April 14 was "incomplete" in that it failed, among other things, to show the names of the contributors and the sums contributed. No further information was thereafter forthcoming from the defendant.

On June 23, 1972, Special Agent Paul Donahue of the Federal Bureau of Investigation delivered to Matthew Higgins, the person who had signed defendant's schedule of remittances, a notice dated June 20, 1972 from Acting Assistant Attorney General Olson requiring that defendant's books and records be made available to Special Agents of the Federal Bureau of Investigation for inspection pursuant to § 5 of the Act.[3] Higgins said the books were not available but would be three days later. That day, June 26, Higgins told Special Agent Donahue that the books and records were not available and that the matter had been referred to the law firm of O'Dwyer and Bernstein (of which Durkan appears to be a member), as attorneys for the defendant.

Appendix B

On June 29, Donahue again contacted Higgins who, in his presence, telephoned Mr. Paul O'Dwyer. O'Dwyer asked that Donahue be put on. O'Dwyer stated that he was the defendant's attorney; that the notice of June 20 requiring the production of the defendant's books and records had been referred to him and that he had advised Higgins not to speak further with representatives of the Federal Bureau of Investigation. The phone was handed back to Higgins. After again speaking to O'Dwyer, Higgins said that after consulting with his attorney he was refusing to make the defendant's records available.

These facts, appearing from the affidavits and attached exhibits, are not in dispute. Thus, the defendant, an agent [4] of a foreign principal [5] within the meaning of the Foreign Agents Registration Act,[6] has failed to fully comply with the registration requirements of § 2 of the Act. In addition, it has refused to allow its books and records to be examined pursuant to the provisions of § 5 of the Act and Rules 500 and 501 promulgated thereunder.[7] As a result, the Attorney General now seeks to compel the defendant to comply with its statutory obligations.

In opposing this application, defendant points out that, on June 12, 1972 subpoenas were served on four of its prominent members and eight others requiring their appearance at a Federal grand jury investigation in Fort Worth, Texas the following week. That grand jury is investigating possible violations of the Act, gun control acts, conspiracy laws and other Federal criminal statutes and it has not been disputed that its investigation, at least in part, involves the shipment of arms and/or funds to the Provisional Irish Republican Army. From this, the defendant argues that the Government is misusing the Act to aid the criminal investigation pending in Texas.

The sole disputed fact then, is defendant's sheer speculation that the ". . . Texas action and the New York action

are one and the same. The instant action is but another prong of the Texas grand jury investigation—an investigation admittedly involving potential *criminal prosecution.*" (Affidavit of Frank Durkan.) The Court cannot understand how this position can be seriously maintained in view of the fact that defendant was advised in writing as early as March 28 of its continuing failures to comply with the Act. Indeed, as we have seen, Durkan, as far back as April 7, was solemnly assuring the Department that there would be compliance and that he would help in obtaining it. What we have here is a case in which defendant has delayed, stalled and finally refused to provide information required by law.

The frivolity of this argument is demonstrated by the fact that if the Texas grand jury wants the documents requested here its subpoenas will speedily collect them and more.

Add to this the Government's supplemental affidavit which quotes a conversation with Olson on July 5, 1972 in which he authorizes the following representations:

1. The Government's request to examine defendant's books and records was not for the purpose of submitting them to the grand jury in Texas.

2. The Government will not send defendant's books and records or copies to the grand jury.

Considering all these factors, the Court sees no necessity for a factual hearing. Cf. *Ross-Whitney Corp.* v. *Smith Kline & French Laboratories,* 207 F.2d 190 (9th Cir. 1953); *Walsh* v. *Local Board No. 10, Mt. Vernon, N.Y.,* 305 F.Supp. 1274 (S.D.N.Y. 1969). It would appear just another tactic to forestall the day when facts reportable at least six months ago will have to be produced. It seems to the Court that this may well be an attempt to checkmate the Government's legal quest for information by requiring the presence for interrogation of high level

Appendix B

Government officials engaged in one of the Nation's most sensitive security areas. It confronts them with the choice of submitting to the questions of the defendant or, in the alternative, of abdicating its statutory rights.

I do not decide in no case will such a hearing be had. But surely Congress intended that its basis be something more than a whim or the desire to frustrate the orderly administration of Government business when it said in § 618(f) of the Act". . . The proceedings shall be made a preferred cause and shall be expedited in every way."

The defendant argues that the Act violates the First Amendment insofar as it requires lists of the defendant's members and contributors.

Two of its officers seek to intervene in this action pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure in order to join in this constitutional objection.

Finally, the defendant argues that the scope of the inspection is too broad and that disclosure of the books and records will result in reprisals against such members and contributors.

The Government, on the other hand, contends that review of the defendant's books and records in order to ascertain defendant's true operations so that amended registration statements can be requested is necessary to discharge its responsibilities under the Act. Moreover, as we have seen, it has specifically represented that the defendant's books and records will not be sent to the Texas grand jury. With regard to the constitutional claim, the Government takes the position that the Act is fully compatible with the First Amendment.

I.

Defendant's arguments that the scope of the requested inspection is too broad and that provisions of the Act violate the First Amendment cannot be sustained. The

first is a straw man. It relies upon the contention that the Government has no right to inspect the personal correspondence contained in the defendant's files. The second, contesting the Government's right to demand disclosure of the names of its members and contributors, is founded on clearly distinguishable cases.

First, the Government made perfectly clear at the argument that it is seeking inspection only of those books and records which are relevant to defendant's registration under the Act. It is not asking for the personal correspondence of defendant's officials, nor books and records concerning other activities, if any, conducted by defendant.

Second, the Act does not specifically call for lists of members, but would require the names and addresses of those who paid or contributed money to the registrant, the amounts paid and the date of payment. In addition, it requires the names and addresses of all employees and agents of the registrant. To the extent that this information elicits membership information, defendant argues that the requested inspection abridges the First Amendment rights of its members and contributors and should be prohibited, citing *NAACP* v. *Alabama*, 357 U.S. 449 (1958) and its progeny.[8] There the Supreme Court held that the NAACP's membership lists were protected from disclosure by the First Amendment on a showing that disclosure would expose its members to economic reprisal, loss of employment, physical coercion, etc., *and* that the disclosure would have little or no bearing on the information the State was attempting to obtain. In short, the Court found no valid State purpose to balance against the abridgement of First Amendment rights.

No such showing appears here. Unlike *NAACP, supra*, there is a strong governmental interest supporting the disclosure sought and, in such cases, the Court has required production. See *Uphaus* v. *Wyman*, 360 U.S. 72 (1959); *Bar-*

enblatt v. *United States*, 360 U.S. 109 (1959). This is a case in which a balance between individual and governmental interests must be struck as in all cases when First Amendment rights are asserted to bar governmental interrogation. *Barenblatt, supra.* Here the balance tilts strongly in favor of the Government.

The purpose of the Act is to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature.[9] These disclosures offer the Government and our people the opportunity to be informed and therefore enable them to understand the purposes for which they act.

The Act is founded upon the indisputable power of the Government to conduct its foreign relations and to provide for the national defense and so falls within the inherent regulatory power of the Congress. *United States* v. *Peace Information Center*, 97 F.Supp. 255 (D.D.C. 1951). What is more fundamental then, than the authority to require every person acting as an "agent" of a foreign principal to file comprehensive information showing his agency activities. See *Uphaus* v. *Wyman, supra; Barenblatt* v. *United States, supra; Wilkinson* v. *United States*, 365 U.S. 399. Cf. *Communist Party of the United States* v. *Subversive Activities Control Board*, 367 U.S. 1 (1960).[10]

Whatever the factual infirmities discussed in the last cited case, it cannot be seriously argued that the sole or dominating purpose of the Act is to compel criminals to keep incriminating records to be used to convict the record-keepers in subsequent criminal trials. Its purpose is to meet the Government's need for records necessary to enforce its national defense and foreign relations policies.

And so, here disclosure of defendant's activities bears a substantial relation to legitimate interest which is asserted by the Government to justify the disclosure. The govern-

mental interest may fairly be said to outweigh any possible infringement of the First Amendment rights of the defendant's members or contributors.

The defendant engages in activities designed to promote the cause of one faction in the dispute currently raging in Northern Ireland. Its fund raising and propaganda activities may well be designed to influence American policy or, put most charitably, may result in serious complications for the Government in the conduct of its foreign affairs. In light of the magnitude of the public interests which the registration and disclosure provisions are designed to protect and the pertinence which registration and disclosure bear to the protection of those interests, I must reject the contention that the First Amendment prohibits the Attorney General from requiring the defendant to produce its books and records for inspection by the officials charged with enforcement of the Foreign Agents Registration Act.

II.

In view of the above disposition, it is clear that the motion of John McCarthy and Michael Flannery to intervene as defendants must be denied. They seek to intervene in order to raise constitutional objections to the Government's inspection.

However, it is apparent that these individuals have no standing to participate in this action in their individual capacities for three reasons. First, the Government is not seeking to inspect any of their personal correspondence. It seeks only to inspect defendant's books and records in connection with its registration under the Act, and its activities for or on behalf of its foreign principal.

Second, the constitutional rights asserted by these individuals cannot be abridged by defendant's production of its books and records. For it is well established that "[T]he official records and documents of [an] organization

that are held by [its officials] in a representative rather than a personal capacity cannot be the subject of the personal privilege against self-incrimination . . ." *United States* v. *White*, 322 U.S. 694, 699 (1944).

Finally, the books and records requested here are required to be kept by § 5 of the Act. Consequently, they fall within the "required records" doctrine, and are not subject to a claim of privilege. *Shapiro* v. *United States*, 335 U.S. 1 (1948); *United States* v. *Kaufman*, 429 F.2d 240 (2d Cir. 1970), *cert. denied* 400 U.S. 925 (1970).

The above constitute my findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

Accordingly, a preliminary injunction will issue. The Court directs that the defendant comply with the provisions of the Act and produce its books and records for inspection by officials charged with enforcement of the Act, including agents of the Federal Bureau of Investigation.

So Ordered.

Dated: August 7, 1972

Harold Banner
Arnold Bauman
U. S. D. J.

FOOTNOTES

[1] 22 U.S.C. § 618(f) (Supp. 1972), amending 22 U.S.C. § 618 (1938). The section provides that:

"(f) whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this subchapter, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this subchapter or the regulations issued thereunder, or otherwise is in violation of the subchapter, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the subchapter or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper. The proceedings shall be made a preferred cause and shall be expedited in every way."

[2] 22 U.S.C. § 612. The section provides in relevant part that:

"(a) No person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required by this section and subsection (b) of this section or unless he is exempt from registration under the provisions of this subchapter. . . ."

[3] 22 U.S.C. § 615. Section 5 provides that:

"Every agent of a foreign principal registered under this subchapter shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this subchapter, in accordance with such business and accounting practices, as the Attorney General, having due regard for the national security and the public interest, may prescribe as necessary or appropriate for the enforcement of the provisions of this subchapter . . ."

Rule 500 promulgated thereunder, 28 C.F.R. § 5.500, requires the registrant to keep the following records:

"(1) All correspondence, memoranda, cables, telegrams, teletype messages, and other written communications to and

from all foreign principals and all other persons, relating to the registrant's activities on behalf of, or in the interest of any of his foreign principals.

(2) All correspondence, memoranda, cables, telegrams, teletype messages, and other written communications to and from all persons, other than foreign principals, relating to the registrant's political activity, or relating to political activity on the part of any of the registrant's foreign principals.

(3) Original copies of all written contracts between the registrant and any of his foreign principals.

(4) Records containing the names and addresses of persons to whom political propaganda has been transmitted.

(5) All bookkeeping and other financial records relating to the registrant's activities on behalf of any of his foreign principals, including canceled checks, bank statements, and records of income and disbursements, showing names and addresses of all persons who paid moneys to or received moneys from, the registrant, the specific amounts so paid or received, and the date on which each item was paid or received.

(6) If the registrant is a corporation, partnership, association, or other combination of individuals, all minute books.

(7) Such books or records as will disclose the names and addresses of all employees and agents of the registrant, including persons no longer acting as such employees or agents.

(8) Such other books, records, and documents as are necessary properly to reflect the activities for which registration is required."

Rule 501, 28 C.F.R. § 5.501, authorizes officials of the Federal Bureau of Investigation to inspect the books and records listed in Rule 500.

[4] § 1 of the Act, 22 U.S.C. § 611, provides that:

"(c) Except as provided in subsection (d) of this section, the term "agent of a foreign principal" means—

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed,

or subsidized, in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages within the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interests of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or offiical of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationships, an agent of a foreign principal as defined in clause (1) of this subsection.

(d) The term "agent of a foreign principal" does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 2611 of Title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subsciptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and it's officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of this section, or by any agent of a foreign principal required to register under this subchapter."

[5] § 1 further provides that:

"(b) The term 'foreign principal' includes—

(1) a government of a foreign country and a foreign political party;

(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States, and

(3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

[6] 22 U.S.C. § 611 *et seq.*

[7] 28 C.F.R. §§ 5.500 and 5.501.

[8] See e.g. *Gibson* v. *Florida Legislative Committee*, 372 U.S. 339 (1962), *Louisiana ex rel Gremillion* v. *NAACP*, 366 U.S. 293 (1961), *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960).

[9] See generally, U.S. Code Cong. & Adm. News 2397 (1966).

[10] To the extent that *Communist Party* v. *Subversive Activities Control Board*, *supra* has been limited by subseqent decisions, see e.g., *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70 (1965), it has been because of Fifth Amendment considerations and not First Amendment considerations.

Since the purpose of the Act is not to compel criminals to keep incriminating records, cases such as *Albertson* are totally inapposite.